



NATIONAL LABOR RELATIONS BOARD

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NLRB CHAIRMAN GOULD URGES GRADS "TO ADVANCE PUBLIC GOOD"

COLUMBUS, Ohio – In a commencement address on May 25 at Capital University Law School, National Labor Relations Board Chairman William B. Gould IV invoked the spirit of both the New Deal and the New Frontier of Presidents Roosevelt and Kennedy as a measure of good government.

Mr. Gould said it has been his long-held belief that "government is at its best when it intervenes in the market to assist those in need of help and the rule of law so that they can be fairly treated." This approach to government, he observed, "contains a commitment to social justice, competitiveness and efficiency – which now must be attuned to the global marketplace."

At the conclusion of his remarks, Mr. Gould was awarded his fourth honorary doctorate of laws. On leave as the Charles A. Beardsley Professor of Law at Stanford University Law School, he has received honorary LL.D. degrees from the University of Rhode Island (1986), The District of Columbia School of Law (1995), and Stetson University College of Law (1996).

Extolling the virtues of good government and public service, Mr. Gould stated further:

[M]y own experience in Washington is that most of our leaders in government and the civil servants on the front lines possess deep and abiding commitments to the rule of law. The real story – that our government for the most part is working remarkably well and is staffed in large measure by honest, capable, hardworking people – just doesn't get told.

My sense is that the dedication and idealistic verve of the 1930s still is very much part of the Board's work in the 1990s. I know of so many who have come to Washington to serve the President, the public interest and the people who are so often forgotten by big institutions, both public and private. I see both dedication and a devotion to high standards when I visit our regional offices throughout the country.

Mr. Gould advised the Capital Law School graduates "to gravitate to a job you like based on your values first, and worry about the money second. You cannot put a price tag on the value of using your professional talents to advance the public good, to help the less fortunate, to protect the weak, to build a better world for our children."

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**IN OBSERVANCE OF THE
CAPITAL UNIVERSITY
LAW SCHOOL
CLASS OF 1997
GRADUATION CEREMONY**

***"THE PURSUIT OF GOOD GOVERNMENT AND SOCIAL JUSTICE:
WHY LAW SCHOOL GRADUATES SHOULD CONSIDER
CAREERS IN PUBLIC SERVICE"***

Delivered by:

**William B. Gould IV
Chairman
National Labor Relations Board
Charles A. Beardsley Professor of Law
Stanford Law School (On Leave)**

**May 25, 1997
2:00 p.m.
Capital University
Law School
Columbus, Ohio**

It is such a pleasure to be here with you today. The first point I want to make -- and perhaps the most important one -- is that I extend my heartiest congratulations to you for completing your work and your graduation at Capital Law School. You made it! You have much to be proud of and a great opportunity is in front of you. I also congratulate the parents, spouses, friends and family whose love and support helped bring the graduates here today.

This is a great opportunity for me -- not only to meet with you, Dean Bahls, President Blackmore and the fine faculty who are here today but also, on a personal note, to be with my friend, Professor Robert Berry and his wife, Carole Berry, of your faculty. I have no friend who is closer to me than Bob -- our friendship dates back almost three decades when we were together as still fairly young law faculty colleagues at Wayne State Law School in Detroit. Bob Berry is one of the premier law professors in the United States -- and, incidentally, as his students here in Columbus and back at Boston College Law School can attest, the original Mr. Chips -- and author of the very first Sports Law course offered in this country.¹

Capital University Law School is a unique and innovative institution. Its long and enduring history shows that it serves a real need in this community and the State of Ohio. The school has progressed from a modest beginning in 1903 as a non-degree YMCA program offering night classes in the law, to a degree-granting night school program in 1919 to its first classes for 48 day students in 1969.

More recently Capital's role of service has broadened to include programs reaching out to other countries as well, including Denmark, Japan, Jamaica, Nicaragua, Mexico and China. In the case of China, it is particularly interesting to observe its struggle in adapting itself to what we think of as the rule of law as Hong Kong returns to the fold -- and the process is proving to be a difficult one. The examination of comparative law here at Capital has broadened the horizons and experiences of both faculty and students -- as it does in all fine institutions of education. For my part, I have long been fascinated by comparative studies and my interest has led to long periods of research and study in Great Britain, Australia, Japan and, in the period of the turbulent '70s and transitional early '90s, South Africa, as well as other countries.²

¹ Bob and I have been co-authors in this field. See Berry & Gould, *A Long Deep Drive to Collective Bargaining: Of Players, Owners, Brawls, and Strikes*, 31 CASE W. RES. L. REV. 685, 774 (1981) and Berry & Gould, *Labor Relations in Professional Sports*, (Auburn House 1986). We have also done some field research in Fenway Park and Boston Garden.

² See William B. Gould IV, *Japan's Reshaping of American Labor Law* (MIT Press 1984).

Capital Law School is a long way from its beginnings. After its original home at the YMCA in 1903, the school, I'm told, resided in several locations including a remodeled Chevrolet dealership and so, the school's new home announced last year marks a new phase. But far more important than the physical facilities, however, are the school's underlying premise and continuing spirit of innovation and community service — some of its most its distinguishing characteristics.

I note from your literature that the small class of 1930 included two women and an African-American. This was far ahead of many top-tier law schools which did not open their doors to women until the 1950s. And black law students were few and far between until the 1960s.

It is alarming to see the recent drop in admission of minority students at public universities in my home state of California and Texas in the first classes after the schools were barred from using racial preferences. In 1995, the University of California's Board of Regents voted to drop race as a factor in admissions for graduate students as of fall and for undergraduates starting next year.

In the case of Texas, last year, the U.S. Court of Appeals for the Fifth Circuit upheld a case brought by some white students who had been denied admission to the University of Texas law school. The court ruled that the school could not use the race of prospective students as a selective factor.

Minority students have been impacted adversely in both states. At UCLA's law school, only 21 black students have been selected for next fall's class, representing an 80 percent drop from last year and the lowest number of African-Americans offered admission since 1970. At the UC-Berkeley law school, 14 blacks have been accepted in a class of 792, a decrease of 75 from last year. Similarly, the University of Texas law school has admitted only 10 black students, compared with 65 last year. Applications from African-Americans dropped 42 percent this year.

The American Council on Education reports that even with affirmative action, minority enrollment on campuses nationally grew less than 3 percent, compared with 7 percent in 1992. I agree with the assessment by the Council's President, Stanley Ikenberry, that the findings are "an early warning signal" for universities trying to preserve or improve minority enrollment, particularly if the ban on racial preferences in Texas and California spreads to other states.

Schools like Capital, which have their roots in the community, respond more quickly to the needs of our society. In looking over your catalogue I am pleased to see how up-to-date your curriculum is with courses in new fields such as health law, bioethics, environmental law, energy law, European Community law, amateur sports law, and African-American males and the law. Most of these courses were not even dreamed of when I was in law school. Other elective courses and seminars such as social welfare benefits, workers and unemployment compensation, creditors and debtors rights, housing

and urban development and human rights are directly relevant to community service issues. Still others relate to government service such as local government law, constitutional history and comparative civil rights. In my law school days, the range of courses was narrow and orthodox. But I think that the diversity of courses found here and in other institutions brings the law closer to issues directly affecting our communities -- and it is a step forward in broadening this generation's education.

These are new and important fields all of which provide opportunities to contribute to a better society. This is borne out by the fact that 19 percent of your 1995 graduates are employed in government services or non-profit public service work, showing a more public spirited group than at most law schools.

This is only my third visit to Columbus, Ohio. The first was also a commencement speech, two years ago at a certain rival institution -- the name of which I shan't mention -- where I spoke on a theme similar to one that I want to develop today. The essence of this theme is the importance of government service and the rule of law, particularly to those of us who have had the honor, responsibilities and obligations which are connected with the legal profession in this country.

My judgment is that there is a great opportunity for lawyers, like yourself, to serve the public good through government service in Washington, D.C., in state capitals, like Columbus, and local governments throughout the country. Of course, a career or period of time in government is not the exclusive road through which one can serve the public interest.

Equally valuable to our society and nation is the work done by law firms representing a wide variety of interests or legal services, or as house counsel for non-profit organizations, trade unions, corporations and civil rights organizations. All of these are good illustrations of important work that can be done. And it seems to me to be irrelevant whether the work is done inside or outside the "Beltway" in the immediate environs of Washington.

Moreover, practitioners who serve commercial interests can do work on a *pro bono* basis as is increasingly being done today. One aspect of this kind of work is the valuable service provided to my agency, the National Labor Relations Board, by an advisory panel of 52 of the country's most distinguished labor lawyers representing management and labor. These individuals, representing the breadth and diversity of our country, give unstintingly of their time in providing us with both input for new ideas and a sounding board for proposals of our own. They have been one of the Board's very best ideas during our term of office these past three years.

The *kind* of government service that one can undertake varies considerably -- and here I am not speaking of subject matter alone.

For instance, one of my first jobs after graduating from Cornell Law School was to serve as a junior attorney for the National Labor Relations Board in the early '60s. I worked for Chairman Frank McCulloch, President Kennedy's nominee to be Chairman of the Board and one of the truly great and distinguished Chairmen of the Agency. I also served on the staff of Board Member Howard Jenkins, the first black appointee to the Board and another distinguished appointee of President Kennedy.

One of my colleagues on Chairman McCulloch's staff, Bill Stewart, an early and outstanding Order of the Coif black law graduate from Indiana University Law School, stayed with the Board as a dedicated career civil servant and became my Chief Counsel when I became Chairman in early 1994. President Clinton, in a March 18 letter to him on his retirement after 38 years of federal service, said Bill's contributions to the agency were "unparalleled."

People like Bill Stewart are a genuine inspiration not only to the many fine and accomplished employees at the Board, but also for lawyers at the bar and aspiring young law graduates like yourselves ready to embark upon a new career which, hopefully, will be of some help to others.

The agency which I head, the National Labor Relations Board, was born out of the idealism of the New Deal during the Great Depression. Like so much else that is part of the New Deal, the National Labor Relations Act which created the Board in 1935 gave workers, trade unions and employers an avenue for their day in court, so to speak, and a forum where their respective interests could be taken into account.

Like any law, which has been in existence for 62 years, numerous imperfections in the statute have become more manifest with each passing year. I addressed a number of them in a book that was published four years ago,³ and in testimony before Congress in 1984,⁴ and elsewhere. I have set forth a series of comprehensive labor law reform proposals in my writings and speeches. The Dunlop Commission, of which I was a member, created by the Labor and Commerce Departments, provided recommendations of its own.⁵

³ William B. Gould IV, *Agenda for Reform: The Future of Employment Relationships and the Law* (MIT Press 1993).

⁴ See William B. Gould IV, Oversight Hearings on the Subject "Has Labor Law Failed," Joint Hearings before the Subcommittee on Labor-Management Relations of the Committee on Education and Labor and the Manpower and Housing Subcommittee of the Committee on Government Operations, House of Representatives, 98th Cong., 2d Sess. (Jun. 21, Jun. 25, and Jun. 26, 1984).

⁵ I was a member of the Commission until March, 1994 when I assumed the Chairmanship of the National Labor Relations Board. Thus, I did not participate in the drafting of the final report.

Yet, the legacy of the National Labor Relations Act itself is an enduring one, and its framework -- holding elections and resolving unfair labor practice disputes -- has stayed intact for this entire period of time. What is particularly remarkable about this lengthy legacy is that the labor relations framework of law in the United States has outlasted that of all the modern industrialized countries including Great Britain, Germany and France, as well as Australia and New Zealand. Only the Scandinavian countries have established a procedure and substantive system with a longer history than ours.

My sense is that the dedication and idealistic verve of the 1930s still is very much part of the Board's work in the 1990s. I know of so many who have come to Washington to serve the President, the public interest and the people who are so often forgotten by big institutions; both public and private. I see both dedication and a devotion to high standards when I visit our regional offices throughout the country.

Nonetheless, I am fearful -- and I am a veritable newspaper "junkie" who tries to read four papers a day as well as other periodicals -- that so many of our new law graduates, like the public, having been fed by a scandal-hungry press and government bashing, are cynical about government and Washington.

Thus, it is both remarkable and ironic -- and, frankly, somewhat discouraging -- that allegations about Whitewater and campaign expenditures have fueled profound cynicism and conspiracy theories on virtually every subject imaginable. My agency has not been immune from attack in this poisonous atmosphere, where oftentimes facts are not permitted to get in the way of political agendas.

For instance, *The Wall Street Journal* in discussing a proposed executive order, later to become an executive memorandum on labor, said recently: "[T]he labor secretary's office traditionally advises the NLRB." This is a comment which is superficially innocent -- but, in fact, is an illustration of deliberate journalistic distortion, designed to produce disrespect for law and our system by implying that the Board's decisions are politically influenced by the Labor Department or the White House. The charge is a false one, a fact which could have been revealed to the *Journal's* editors through a mere phone call to the Board or most knowledgeable labor lawyers on either side of the fence.

At the time that the Act was formulated, Secretary of Labor Frances Perkins had the idea that the Board would be part of the Department of Labor. But, when the statute finally was enacted, this idea was rejected and like most of the other alphabet agencies of the New Deal, the Board was established as an independent agency whose members can be dismissed only for "malfeasance," thus insulating them from improper political influence from the White House or elsewhere in the government. The regrettable aspect of *The Wall Street Journal* editorial is that it comes at a time when the press is full of allegations and innuendoes to the effect that adjudicators, like the members of the Board, are being influenced by politics -- a phenomenon that could be present in my agency if in fact we took "instructions" from the Department of Labor, which of course is not the case.

During my entire three years of service as Chairman since March 1994, not one single proposal or suggestion, direct or indirect, has come to our agency from any part of the executive branch of government -- including the White House -- let alone the Department of Labor. Moreover, in my discussions and dealings with the heads of other independent regulatory agencies, I have never heard anything contrary to my own experience. Thus, my own experience in Washington is that most of our leaders in government and the civil servants on the front lines possess deep and abiding commitments to the rule of law. The real story -- that our government for the most part is working remarkably well and is staffed in large measure by honest, capable, hardworking people -- just doesn't get told.

A second part of my experience is one that I have alluded to previously -- a belief that government is at its best when it intervenes in the market to assist those in need of help and the rule of law so that they can be fairly treated. This was the spirit of both the New Deal and the New Frontier of Presidents Franklin Delano Roosevelt and John F. Kennedy respectively.

Though I cannot personally recall the desperate circumstances of the Great Depression of the 1930s, I am nonetheless a child of that experience and one who heard stories of deprivation as well as the most rank and egregious discrimination during that difficult period. The values and moral base of the Democratic Party, as well as that of the Episcopal Church, are at the core of my beliefs.

I grew up in a family that had deep respect, bordering upon veneration for President Roosevelt, whom President Bill Clinton honored earlier this month through the dedication of his new memorial in Washington. This was and is a philosophy which contains a commitment to social justice, competitiveness and efficiency -- which now must be attuned to the global marketplace.

This approach is about obtaining a system of managed capitalism -- which both President Clinton and, this spring, United Kingdom Prime Minister Tony Blair have espoused. As E. J. Dionne Jr. said recently about Britain's May 1 election in *The Washington Post*:

If Blair stood for anything in this election, it was for the idea that having accepted capitalism, Labor's job was to humanize it, to balance off its inequities, to use government to enhance the chances of those falling behind, to protect those (notably the elderly) who continue to need from government.⁶

⁶ E. J. Dionne Jr., *Labor's Landslide*, WASH. POST, May 6, 1997, at A19.

These ideas and the National Labor Relations Board's balanced commitment to democracy in the workplace as well as rights and obligations for both labor and management which I espouse -- are not beyond controversy today. In fact, it should come as no surprise that certain interests are intent on subverting the National Labor Relations Act and attacking the NLRB because they oppose employee rights and industrial democracy. Having said that, I want to stress that the role of NLRB Chairman is to adjudicate cases in a fair and balanced way based on the facts and the rule of law. My duty as a public servant is to remain faithful to my oath of office and the ideals of our National Labor Relations Act, the Constitution and the rule of law. I have done so.

In closing, I would like to address an issue I would guess many of you might be thinking in connection with what your first job out of law school should be. The point was put succinctly by the incredibly talented and compelling actor, Cuba Gooding, in the film *Jerry Maguire*: "Show me the money."

There is, of course, nothing intrinsically wrong with making a lot of money. Who can blame Rick Pitino for leaving Kentucky to join my beloved Boston Celtics to make \$10 million a year for seven years? My advice, though, is to gravitate to a job you like based on your values first, and worry about the money second. You cannot put a price tag on the value of using your professional talents to advance the public good, to help the less fortunate, to protect the weak, to build a better world for our children.

And so, go forth to do good works. Congratulations, good luck, and Godspeed.

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